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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR          | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|-------------------------------|---------------------|------------------|
| 10/620,481  | 07/16/2003  | Max Harry Well                | 03/118              | 9073             |
| 7590 08/20/2004   |             |                               |                     |                  |
| LEON D. ROSEN<br>FREILICH, HORNBAKER & ROSEN<br>Suite 1220<br>10960 Wilshire Blvd.<br>Los Angeles, CA 90024 |             | EXAMINER<br>DEMILLE, DANTON D |                     |                  |
|   |             | ART UNIT<br>3764              |                     | PAPER NUMBER     |
| DATE MAILED: 08/20/2004   |             |                               |                     |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                               |                             |  |
|------------------------------|-------------------------------|-----------------------------|--|
| <b>Office Action Summary</b> | Application No.<br>10/620,481 | Applicant(s)<br>WELL ET AL. |  |
|                              | Examiner<br>Danton DeMille    | Art Unit<br>3764            |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-32 is/are pending in the application.  
     4a) Of the above claim(s) 1-9, 18-24 and 28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10-17, 25-27 and 29-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |



## DETAILED ACTION

### *Election/Restrictions*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-9, drawn to the apparatus with details of the stabilizer, classified in class 601, subclass 44.
  - II. Claims 10-17, 25-27 and 29-32, drawn to the apparatus applying an upward force to the reciprocating member, classified in class 601, subclass 44.
  - III. Claims 18-22, 15, drawn to the pressing member and pivot joint, classified in class 601, subclass 44.
  - IV. Claim 28, drawn to a method of supplying pressurized breathable gas to the actuator and patient, classified in class 601, subclass 44.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions Group I, II, III and IV are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention Groups I-IV have separate utility for applying compressions to the chest of the patient that doesn't require the details of the other inventions. See MPEP § 806.05(d).
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Leon Rosen on 17 August 2004 a provisional election was made with traverse to prosecute the invention of Group III, claims 10-17, 27-27 and

29-32. Affirmation of this election must be made by applicant in replying to this Office action.

Claims 1-9, 18-24 and 28 are withdrawn from further consideration by the examiner, 37

CFR 1.142(b), as being drawn to a non-elected invention.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

6. An examiner's amendment to the record appears below.

7. The application has been amended as follows:

8. In claim 25, line 4, after "patient's chest" and before the comma --to press against a patient's chest, while the frame is coupled to a wrap that extends to the back of the patient--

9. In claim 29, line 3, after "an actuator" --coupled to a wrap that extends to the back of the patient,--has been inserted. After line 5 of claim 29, a new subparagraph has been inserted:

--applying upward forces to said actuator between said applications of  
downward forces;--

10. Authorization for this examiner's amendment was given in a telephone interview with Leon Rosen on 17 August 2004.

***Claim Rejections - 35 USC § 102***

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --  
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**12. Claims 10, 11, 16, 17, 25 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Arpin.**

13. Arpin teaches “A spring (not shown) within the cylinder 36 is compressed as the piston advances under hydraulic pressure and assist in retracting the piston and ram 42 when the pressure is relieved by retraction of the ram 27 of the master cylinder” column 6, lines 37-41. Stabilizer 38 extends completely around the actuator.

**14. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Arpin in view of Nowakowski.**

15. Nowakowski teaches in figures 5, 7 and 8 that the reciprocating member includes at least two piston parts that telescopically slide relative to one another. Piston part 48 telescopes within member 4 and piston part 61 slides within piston part 48. it would have been obvious to one of ordinary skill in the art to modify Arpin to provide this telescoping arrangement as taught by Nowakowski in order to bias the reciprocating member so that the reciprocating member can yield to an expanding chest in the case of improper setting of the height adjustment.

**16. Claims 10, 14, 25, 26, 27, 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelly et al.**

17. Kelly teaches in the embodiment of figure 6 of an energizable actuator 170 that repeatedly presses against the patient’s chest and a torso wrap 180, 182. The actuator includes a stationary frame 178 and a reciprocation member 170. Kelly teaches many different equivalent alternative embodiments that combine mechanical and electrical equivalent actuators. Figure 7 shows a motor 202. Figure 8 shows hydraulic cylinder 220. Figure 9 shows a power unit 254 column 11, lines 54-67. The power unit 254 may use computer controls to time the application

of force. It is not clear what provides the force to reciprocate the piston 170 in figure 6 however, Kelly suggests providing a power unit with computer controls. It would have been obvious to one of ordinary skill in the art to modify Kelly and use a power unit and computer as taught by Kelly to control the reciprocating motion of the piston in the figure 6 embodiment to automate the mechanical process.

18. Regarding claim 14, Kelly teaches column 12, lines 9-30, "to ensure that the patient's lungs are allowed to expand as much as desired, it may be necessary to include a full-release indicator with the present invention." "This indicator may include a limit switch, a magnet reed relay or contacts on the base 14 against which the arm assemblies 16 and 18 rest in their relaxed position." Furthermore, Kelly teaches "a mechanism could be added to the arm assemblies 16 and 18 for preventing the application of force to the handles 30 and 32 until full release (and return to the relaxed position) has occurred. Clearly Kelly teaches the importance of providing a means for sensing recovery of the patient's chest and making sure the cycle does not begin again until a full release position has occurred. Since the system is controlled by a computerized power unit there appears to be no unobviousness to use this limit switch sensor to sense the recovery of the patient's chest as part of the automated system to ensure a full release position has occurred so that the means for cycling begins to again move to depress the patient's chest. It would have been obvious to one of ordinary skill in the art to further modify Kelly to include the means for sensing recovery of the patient's chest as taught by Kelly in the automated system to control the means for cycling to control the instant at which the cycling begins as taught by Kelly.

19. Regarding claims 26, 29, Kelly column 12, lines 24-30, teach the provision of a force



converted so that the downward force is stored and suddenly release during the application of the downward force. "The sudden release would be applying a short duration, high intensity force to the chest rather than a long duration application of force as with the preferred embodiment."

Kelly clearly teaches the advantage of applying the downward force in a sudden impact rather than a long duration of application. It would have been obvious to one of ordinary skill in the art to further modify Kelly to include this force converted so that the downward force is applied in a short duration. The exact duration of the sudden impact over the time of the cycle is well within the realm of the artisan of ordinary skill. One of ordinary skill would find the optimum characteristics for a particular patient. 30% of the time would not appear to be outside the realm of the artisan of ordinary skill.

20. Regarding claim 27, Kelly teaches the sole of the base can either be an adhesive pad 500 or a suction cup 502 column 4, lines 41-44.

21. **Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Arpin in view of McClain et al.**

22. McClain teaches a pressing member 70 just as Arpin teaches a pressing member 43 at the lower end of a piston. The pressing member of McClain is pivotally attached at 60 to allow for different shapes of people and to assure the pressing member is always making complete and uniform contact with the patient. It would have been obvious to one of ordinary skill in the art to further modify Arpin to include a pivot connection between the piston and the pressing member as taught by McClain to assure the pressing member is always making complete and uniform contact with the patient.

23. **Claims 29-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over**



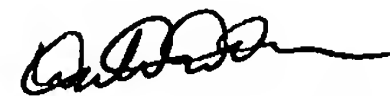
**Hewson Re. 26,511 in view of Kelly et al. and Arpin.**

24. Hewson teaches the method of energizing an actuator using compressed breathable gas to the actuator 14 and to the patient. Hewson appears silent with regard to whether or not there is a means to assist the piston to return to the original position. Arpin teaches a spring within the cylinder to return the piston to its original position. Kelly teaches the importance of applying the downward force in a sudden impact duration. It would have been obvious to one of ordinary skill in the art to modify Hewson to apply the downward force in a sudden impact duration as taught by Kelly to improve the method of resuscitation and to use a spring to force the piston to return to its original position as taught by Arpin to assist retraction of the piston when pressure is relieved. As noted above the exact percentage of time duration for the sudden impact is well within the realm of the artisan of ordinary skill.

25. Regarding claim 32 Arpin teaches the pad at the lower end of the actuator is curved at the ends to allow the pad to tilt. Such would have been an obvious provision in the modification of Hewson.

26. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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